

DIVISION 20. CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT

[50000 - 50706]

(Division 20 added by Stats. 1994, Ch. 994, Sec. 7.)

CHAPTER 1. General [50000 - 50006]

(Chapter 1 added by Stats. 1994, Ch. 994, Sec. 7.)

50000.

This division will be known and may be cited as the California Residential Mortgage Lending Act.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50001.

Unless the context otherwise requires, the definitions in this chapter apply throughout this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50002.

(a) No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

(b) (1) An employee of a licensee or of a person exempt from licensure is not required to be licensed when acting within the scope of his or her employment and shall be exempt from any other law from which his or her employer is exempt, except that an individual who meets the definition of a mortgage loan originator in Section 50003.5 shall be subject to this division.

(2) A person exempt from this division may apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators as defined in Section 50003.5 and pursuant to the SAFE Act.

(3) An exempt person applying under the exempt company registration procedure shall comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and shall pay an annual registration fee established by the commissioner.

(c) The following persons are exempt from subdivision (a):

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

- (2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.
 - (3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.
 - (4) A person engaged solely in business, commercial, or agricultural mortgage lending.
 - (5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.
 - (6) An agency or other instrumentality of the federal government, or state or municipal government.
 - (7) An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, or an owner who controls that person, affiliate, or subsidiary of that person.
 - (8) A person acting in a fiduciary capacity conferred by the authority of a court.
 - (9) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.
 - (10) A California finance lender or broker licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.
 - (11) A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.
 - (12) A mortgage loan originator who has obtained a license under Chapter 3.5 (commencing with Section 50140), provided that the mortgage loan originator is employed by a residential mortgage lender or servicer.
 - (13) A registered mortgage loan originator described in subdivision (e).
 - (d) An individual, unless specifically exempted under subdivision (e), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of Chapter 3.5 (commencing with Section 50140) and any rules promulgated by the commissioner under that chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.
 - (e) A registered mortgage loan originator is exempt from licensure under subdivisions (a) and (d), when he or she is employed by a depository institution, a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.
 - (f) A loan processor or underwriter who is an independent contractor employed by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 50120.
- (Amended by Stats. 2012, Ch. 264, Sec. 8. Effective January 1, 2013.)*

50002.5.

- (a) Every licensee engaging in the business of making, servicing, or making and servicing residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license

from the commissioner under this division or Division 9 (commencing with Section 22000), or has first obtained a license endorsement from the commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(b) A residential mortgage lender or servicer shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(c) A residential mortgage lender or servicer may not make or broker a residential mortgage loan unless that loan is negotiated by or applied for through a licensed mortgage loan originator.

(d) Every licensee engaged in the business of making, servicing, or making and servicing residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) No mortgage loan originator licensed under this division and employed by a licensed residential mortgage lender or residential mortgage servicer shall engage in any activity that is not an authorized activity for a licensed residential mortgage lender or residential mortgage servicer pursuant to this division.

(Added by Stats. 2009, Ch. 160, Sec. 46. Effective October 11, 2009.)

50003.

(a) "Annual audit" means a certified audit of the licensee's books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) "Borrower" means the loan applicant.

(c) "Buy" includes exchange, offer to buy, or solicitation to buy.

(d) "Commissioner" means the Commissioner of Business Oversight.

(e) "Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(g) "Engage in the business" means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. "Engage in the business" also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(h) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(i) "In this state" includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this

state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

(j) "Institutional investor" means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the federal Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of those securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(8) A licensed real estate broker selling the loan to an institutional investor specified in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

(9) A business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a small business investment company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(10) A syndication or other combination of any of the foregoing entities that is organized to purchase a promissory note.

(11) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of securities representing undivided interests in, or rights to receive payments from or to receive payments primarily from, a pool of financial assets held by the trust or business entity, provided that all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest-bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancement for the assets.

(C) The securities will be either one of the following:

(i) Rated as "investment grade" by Standard and Poor's Corporation or Moody's Investors Service, Inc. "Investment grade" means that the securities will be rated by Standard and Poor's Corporation as AAA, AA, A, or BBB or by Moody's Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with "+" or "-" designation or other variations that occur within those ratings.

(ii) Sold to an institutional investor.

(D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(k) "Institutional lender" means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.

(l) "Law" means the California Residential Mortgage Lending Act.

(m) "Lender" means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(n) "Licensee" means, depending on the context, a person licensed under Chapter 2 (commencing with Section 50120), Chapter 3 (commencing with Section 50130), or Chapter 3.5 (commencing with Section 50140).

- (o) "Makes or making residential mortgage loans" or "mortgage lending" means processing, underwriting, or as a lender using or advancing one's own funds, or making a commitment to advance one's own funds, to a loan applicant for a residential mortgage loan.
- (p) "Mortgage loan," "residential mortgage loan," or "home mortgage loan" means a federally related mortgage loan as defined in Section 1024.2 of Title 12 of the Code of Federal Regulations, or a loan made to finance construction of a one-to-four family dwelling.
- (q) "Mortgage servicer" or "residential mortgage loan servicer" means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.
- (r) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.
- (s) "Net worth" has the meaning set forth in Section 50201.
- (t) "Own funds" means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender's financial statements, whether secured or unsecured, or (2) a lender's affiliate's cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the affiliate's financial statements, whether secured or unsecured. "Own funds" does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.
- (u) "Person" means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.
- (v) "Residential real property" or "residential real estate" means real property located in this state that is improved by a one-to-four family dwelling.
- (w) "SAFE Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).
- (x) "Service" or "servicing" means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.
- (y) "Sell" includes exchange, offer to sell, or solicitation to sell.
- (z) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.
- (aa) For purposes of Sections 50142, 50143, and 50145, "nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.
- (ab) For purposes of Section 50141, "expungement" means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state's definition of expungement will apply.
(Amended by Stats. 2014, Ch. 64, Sec. 22. Effective January 1, 2015.)

50003.5.

(a) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include any of the following:

- (1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 50003.6. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- (2) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires that employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.
- (3) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.
- (4) An individual licensed as a mortgage loan originator pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.
- (5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

(A) For purposes of this paragraph, the term "employee" means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(B) For purposes of this paragraph, the term "housing finance agency" means any authority:

- (i) That is chartered by a state to help meet the affordable housing needs of the residents of the state.
- (ii) That is supervised directly or indirectly by the state government.
- (iii) That is subject to audit and review by the state in which it operates.

(6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner, along with documentation of all of the following by December 31 of each year:

- (i) Status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (ii) That the organization promotes affordable housing or provides home ownership education or similar services.

- (iii) That the organization conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes.
 - (iv) That the organization receives funding and revenue, and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.
 - (v) That the organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
 - (vi) That the organization provides to, or identifies for, the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.
 - (vii) That the organization is certified by the United States Department of Housing and Urban Development as a housing counselor who engages solely in traditional housing counseling services, if applicable.
- (C) The commissioner may periodically require reports regarding the activities of the bona fide nonprofit organization, and shall examine the nonprofit organization's books and records in accordance with the regulations of the United States Department of Housing and Urban Development, or any successor guidance or requirement by the Consumer Financial Protection Bureau. If the nonprofit organization fails to provide documentation as required by subparagraph (B), or if it does not continue to meet the criteria under subparagraph (B), the commissioner may revoke the nonprofit organization's status as a registered bona fide nonprofit organization.
- (D) For residential mortgage loans to have terms that are favorable to the borrower, the terms shall be consistent with loan origination in a public or charitable context, rather than a commercial context.
- (E) In making its determinations and examinations, the commissioner may rely on the receipt and review of:
- (i) Reports filed with federal, state, or local housing agencies and authorities.
 - (ii) Reports and attestations prescribed by the commissioner by rule or order.
 - (c) "Registered mortgage loan originator" means any individual who is all of the following:
 - (1) Meets the definition of mortgage loan originator.
 - (2) Is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.
 - (3) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.
 - (d) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator licensed by the state or a registered mortgage loan originator.
- (Amended by Stats. 2012, Ch. 264, Sec. 10. Effective January 1, 2013.)*

50003.6.

- (a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a loan originator shall not be required to be licensed as a mortgage loan originator.
- (b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing

information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a residential mortgage lender or residential mortgage servicer license and a mortgage loan originator license under this division.

(Added by Stats. 2009, Ch. 160, Sec. 49. Effective October 11, 2009.)

50004.

"Fraud," "deceit," and "defraud" are not limited to common law fraud or deceit.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50005.

This division creates and authorizes a class of exempt persons pursuant to Section 1 of Article XV of the California Constitution.

(Amended by Stats. 1995, Ch. 564, Sec. 7. Effective January 1, 1996.)

50006.

No person subject to this law shall use in its name "bank," "trust," "trustee," "loan association," or related terms. This section does not apply to any person licensed under the Banking Law or the Savings Association Law.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

CHAPTER 2. Licensing: Residential Mortgage Lender [50120 - 50129]

(Chapter 2 added by Stats. 1994, Ch. 994, Sec. 7.)

50120.

(a) A residential mortgage lender shall file an application for licensure under this chapter with the commissioner to make or service residential mortgage loans in this state.

(b) A licensee may not engage in the business as a residential mortgage lender under a name other than the name that appears on the license, or a legally assumed name disclosed either in the application or in an amendment to the application, which shall be reflected on the license.

(c) A licensee may not make or service residential mortgage loans secured by real property pursuant to the authority of a license, or an exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage lender license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

(e) A license issued for a business location outside this state shall constitute an agreement by the licensee to, at the sole discretion of the commissioner, either (1) make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state within 10 calendar days of a request from the commissioner or, (2) pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during an investigation or examination made at the licensee's location outside this state.

(f) The commissioner may, by rule, require an applicant for a residential mortgage lender or servicer license or a residential mortgage lender or servicer licensee to make some or all filings with the commissioner through the Nationwide Mortgage Licensing System and Registry.

(g) The commissioner may, by rule, require licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

(Amended by Stats. 2009, Ch. 160, Sec. 50. Effective October 11, 2009.)

50121.

The commissioner shall issue a residential mortgage lender license upon the satisfaction of all of the following:

(a) The filing with the commissioner of a complete and executed application for licensure, which may, at the discretion of the commissioner, include background and experience disclosures required by any of the uniform application forms of the Nationwide Mortgage Licensing System and Registry.

(b) The payment of a nonrefundable investigation fee of one hundred dollars (\$100), plus the cost of fingerprint processing and clearance, and an application filing fee of nine hundred dollars (\$900).

(c) An investigation of the statements required by Section 50124 based upon which the commissioner is able to issue findings that the financial responsibility, criminal records (verified by fingerprint, at the discretion of the commissioner), experience, character, and general fitness of the applicant and of the partners or members thereof, if the applicant is

a partnership or association, and of the principal officers and directors thereof, if the license applicant is a corporation, support a finding that the business will be operated honestly, fairly, and in accordance with the requirements of this division.
(Amended by Stats. 2009, Ch. 160, Sec. 51. Effective October 11, 2009.)

50122.

(a) Except as provided in Section 50120, the information provided on an application for a residential mortgage lender, residential mortgage servicer, or residential mortgage lender and servicer license shall be sworn testimony on a form prescribed by the commissioner. If an applicant proposes to engage in business as a residential mortgage loan servicer as well as a residential mortgage lender, this information shall be set forth in the application. The commissioner may issue a license under this chapter to engage in business as a residential mortgage lender or to engage in business as a residential mortgage lender and residential mortgage loan servicer. A person filing an application under this chapter to engage in business as a residential mortgage lender and a residential mortgage loan servicer is not required to file an application under Chapter 3 (commencing with Section 50130).

(b) The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation, or other entity, the application shall contain the names and complete business and residential addresses of each member, director, and principal officer. The application also shall include a description of the activities of the applicant in the detail and for the periods that the commissioner may require, including all of the following:

(1) A statement of financial solvency, noting the net worth requirements and supported by an audited financial statement prepared by an independent certified public accountant, and access to the supporting credit information as required by this division.

(2) A statement that the applicant or its members, directors, or principals, as appropriate, are at least 18 years of age. The statement may be made by providing each person's date of birth.

(3) Information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any of the following:

(A) Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock of the applicant.

(B) Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors of an applicant.

(C) Any person or entity that significantly influences or controls the management of the applicant.

(4) A description of any disciplinary action filed under any other license through which the person conducts its business.

(5) A description of any adverse judgments entered in court actions filed by borrowers based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the person's business.

(6) A copy of the fidelity bond currently in effect.

(7) Other information as required by rule of the commissioner.

(Amended by Stats. 2009, Ch. 160, Sec. 52. Effective October 11, 2009.)

50123.

(a) A residential mortgage lender license shall remain in effect until suspended, surrendered, or revoked.

(b) A residential mortgage lender licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, and the plan shall include a timetable for the disposition of the business. The plan shall also include a closing audit, review, or other agreed upon procedures performed by an independent certified public accountant prescribed by rule or order of the commissioner. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of this law.

(c) A residential mortgage lender or servicer licensee may not surrender its license under this division and, under the authority of a real estate license, subsequently engage in residential mortgage lending or servicing activities that are subject to this division, unless the licensee has been licensed under this division for a period of five years or more.

(Amended by Stats. 2009, Ch. 160, Sec. 53. Effective October 11, 2009.)

50124.

(a) A residential mortgage lender or servicer shall do all of the following:

(1) Maintain staff adequate to meet the requirements of this division, as prescribed by rule or order of the commissioner.

(2) Keep and maintain for 36 months from the date of final entry the business records and other information required by law or rules of the commissioner regarding any mortgage loan made or serviced in the course of the conduct of its business.

(3) File with the commissioner any report required under law or by rule or order of the commissioner.

(4) Disburse funds in accordance with its agreements and to make a good faith and reasonable effort to effect closing in a timely manner.

(5) Account or deliver to a person any personal property such as money, funds, deposit, check, draft, mortgage, other document, or thing of value, that has come into its possession and is not its property, or that it is not in law or equity entitled to retain under the circumstances, at the time that has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.

(6) File with the commissioner an amendment to its application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation. The commissioner shall, within 20 business days of receiving a completed amendment to the application, or within a longer time if agreed to by the licensee, approve or disapprove the effectiveness of the proposed amendment.

(7) Comply with the provisions of this division, and with any order or rule of the commissioner.

(8) Submit to periodic examination by the commissioner as required by this division.

(9) Advise the commissioner by amendment to its application of any material judgment filed against, or bankruptcy petition filed by, the licensee within five days of the filing.

- (10) Notify the commissioner, in writing, prior to opening a branch office in this state or changing its business location or locations or its branch offices from which activities subject to this division are conducted.
 - (11) Comply with all applicable state and federal tax return filing requirements.
 - (12) Refrain from employing, or paying a commission or other fee to, a mortgage loan originator who is not licensed in this state, unless the individual is exempt from licensure.
 - (13) Refrain from committing a crime against the laws of any state or the United States, involving moral turpitude, misrepresentation, fraudulent or dishonest dealing, or fraud, and disclose to the commissioner any final judgment entered against it in a civil action upon grounds or allegations of fraud, misrepresentation, or deceit.
 - (14) Refrain from engaging in conduct that would be cause for denial of a license.
 - (15) Remain solvent.
 - (16) Proceed with due care and competence in performing any act for which it is required to hold a license under this division.
 - (17) Comply with any other requirement established by rule of the commissioner.
- (b) The commissioner may require an applicant to submit a statement agreeing to comply with the requirements of this section.
- (Amended by Stats. 2009, Ch. 160, Sec. 54. Effective October 11, 2009.)*

50125.

The commissioner may refuse to issue a residential mortgage lender or servicer license if any of the following apply:

- (a) The applicant is not in material compliance with a provision of this division or an order or rule of the commissioner.
 - (b) The commissioner cannot make the findings specified in subdivision (c) of Section 50121.
 - (c) A material requirement for issuance of a license has not been met.
- (Amended by Stats. 2009, Ch. 160, Sec. 55. Effective October 11, 2009.)*

50126.

- (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny an application for any of the following reasons:
 - (1) A false statement of a material fact has been made in the application.
 - (2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (A) been convicted of, or pleaded nolo contendere to, a crime or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.
 - (3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.
 - (4) The applicant employs a mortgage loan originator who is not licensed in this state, unless the mortgage loan originator is exempt from licensure.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license, including the receipt of background and investigative reports from the Department of Justice or other government agencies, and the payment of the fees required by Section 50121, issue either a residential mortgage lender or servicer license or a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
(Amended by Stats. 2009, Ch. 160, Sec. 56. Effective October 11, 2009.)

50127.

The proceedings for a denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner has all the powers granted therein.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50128.

As used in this act, the term "principal officer" means an officer with direct responsibility for the conduct of the residential mortgage lender or servicer licensee's or license applicant's lending or servicing activities in this state.

(Amended by Stats. 2009, Ch. 160, Sec. 57. Effective October 11, 2009.)

50129.

(a) A residential mortgage lender or servicer licensed under this chapter may, under the authority of that license and subject to the provisions of this division, do both of the following:

(1) Engage as a principal in the business of buying from or selling to institutional investors residential mortgage loans by using or advancing one's own funds.

(2) Engage, pursuant to a written agency contract with an institutional lender specified in paragraph (1), (2), or (4) of subdivision (k) of Section 50003, in the business of soliciting, processing applications, or applying residential loan underwriting criteria, but not engage in the business of brokerage services pursuant to this subdivision, for residential mortgage loans for that lender, using or advancing the funds of that lender, provided that no fees or charges may be demanded or collected by the residential mortgage lender licensee for any performance or service, except fees demanded by, or collected on behalf of, the institutional lender, and that the licensee gives a written disclosure to the borrower, as soon as practicable but prior to loan closing, identifying the licensee and stating that the licensee is not the lender in the transaction but has contracted to provide soliciting, processing, or underwriting services for the lender. Separate schedules of the number and principal amount of the loans processed and underwritten shall be included in the licensee's annual report required by subdivision (a) of Section 50401.

(b) The act of soliciting other institutional lenders with whom a residential mortgage lender licensee has concluded an agency contract pursuant to paragraph (2) of subdivision (a) for placement of a loan upon declination of that loan by another institutional lender

contracted under paragraph (2) of subdivision (a), constitutes brokerage services, and may be pursued by the licensee only following execution of a loan brokerage agreement with the borrower as provided in this division.

(Amended by Stats. 2009, Ch. 160, Sec. 58. Effective October 11, 2009.)

CHAPTER 3. Licensing: Residential Mortgage Loan Servicer [50130- 50130.]

(Chapter 3 added by Stats. 1994, Ch. 994, Sec. 7.)

50130.

(a) A mortgage servicer shall file an application for licensure under this chapter with the commissioner to service mortgage loans in this state by satisfying the requirements of this chapter and the applicable provisions, as determined by the commissioner, of Chapter 2 (commencing with Section 50120).

(b) A mortgage servicer may apply for licensure by doing all of the following:

(1) Filing with the commissioner an application containing the information required by Section 50122, and any additional information the commissioner may require by rule.

(2) Paying the investigation and application fees required by Section 50121.

(3) Submitting any information required by Section 50124.

(4) Complying with the applicable provisions of Chapter 2 (commencing with Section 50120).

(c) A licensee may not make or service loans secured by real property pursuant to the authority of a license, or exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage servicer license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

(e) A license for a business location outside this state shall constitute an agreement by the mortgage servicer to, at the discretion of the commissioner, either (1) make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state within 10 calendar days of a request from the commissioner or, (2) pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during an investigation or examination made at the licensee's location outside this state.

(f) The commissioner shall license a mortgage servicer upon completion of the investigation and issuance of the findings required by Section 50121, subject to Sections 50123, 50125, 50126, and 50127.

(g) A mortgage servicer licensed to service mortgage loans shall comply with all applicable requirements of California and federal law, including the Civil Code and Section 2609 of the federal Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et seq.).

(h) A license shall remain in effect until suspended, surrendered, or revoked.

(i) The commissioner may require an applicant or licensee to make some or all filings with the commissioner through the Nationwide Mortgage Licensing System and Registry.

(Amended by Stats. 2009, Ch. 160, Sec. 59. Effective October 11, 2009.)

CHAPTER 3.5. Mortgage Loan Originators [50140 - 50146]

(Chapter 3.5 added by Stats. 2009, Ch. 160, Sec. 60.)

50140.

(a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

(b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.

(c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.

(d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.

(e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report obtained from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (g) and (h).

(g) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

(h) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.

(i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(Added by Stats. 2009, Ch. 160, Sec. 60. Effective October 11, 2009.)

50141.

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation or set aside of such revocation shall not be deemed a revocation.

(2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(4) The applicant has completed the prelicensing education requirement described in Section 50142.

(5) The applicant has passed a written test that meets the test requirements described in Section 50143.

(6) The applicant is employed by, and subject to the supervision of, a residential mortgage lender or servicer that has obtained a license from the commissioner pursuant to this division.

(7) The surety bond of the residential mortgage lender or servicer employing the applicant covers the activities of the applicant and meets the requirements of Section 50205.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

(Amended by Stats. 2011, Ch. 444, Sec. 4. Effective January 1, 2012.)

50142.

(a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(4) Two hours of training related to relevant California law and regulations.

(b) For purposes of subdivision (a), prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and

approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be accepted as credit toward completion of prelicensing education requirements in California.

(f) An individual previously licensed under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which that individual last held the license.

(Amended by Stats. 2014, Ch. 123, Sec. 4. Effective January 1, 2015.)

50143.

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics.

(2) Federal law and regulation relating to mortgage origination.

(3) State law and regulation relating to mortgage origination.

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) (1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(2) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(3) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

(Amended by Stats. 2014, Ch. 123, Sec. 5. Effective January 1, 2015.)

50144.

(a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 50141.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 50145.

(3) The mortgage loan originator, or the residential mortgage lender or servicer employing the mortgage loan originator, has paid all required fees for renewal of the license.

(4) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in Section 50145. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

(Amended by Stats. 2010, Ch. 287, Sec. 13. Effective January 1, 2011.)

50145.

(a) A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(4) One hour of training related to relevant California law and regulations.

(b) For purposes of subdivision (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) Except as provided in subdivision (i), a licensed mortgage loan originator:

(1) May only receive credit for a continuing education course in the year in which the course is taken.

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 50144 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

(Amended by Stats. 2014, Ch. 123, Sec. 6. Effective January 1, 2015.)

50146.

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

(a) Background checks for:

(1) Criminal history through fingerprint or other databases.

(2) Civil or administrative records.

(3) Credit history.

(4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry or the commissioner.

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(Added by Stats. 2009, Ch. 160, Sec. 60. Effective October 11, 2009.)

CHAPTER 3.6. Nationwide Mortgage Licensing System and Registry [50150 - 50152]

(Chapter 3.6 added by Stats. 2009, Ch. 160, Sec. 61.)

50150.

(a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

(b) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(e) The commissioner shall establish a process where applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

(Added by Stats. 2009, Ch. 160, Sec. 61. Effective October 11, 2009.)

50151.

(a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal law or the Information Practices Act (Chapter 1 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Information Practices Act.

(b) Information or material that is subject to a privilege or confidentiality under subdivision (a) shall not be subject to the following:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the state.

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(c) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions

against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(Added by Stats. 2009, Ch. 160, Sec. 61. Effective October 11, 2009.)

50152.

The commissioner shall report regularly violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry, to the extent that information is public record.

(Added by Stats. 2009, Ch. 160, Sec. 61. Effective October 11, 2009.)

CHAPTER 4. Financial Condition, Transaction and Bond Requirements [50200 - 50209]

(Chapter 4 added by Stats. 1994, Ch. 994, Sec. 7.)

50200.

(a) At the end of the licensee's fiscal year, but in no case more than 12 months after the last audit conducted pursuant to this section, each licensed residential mortgage lender or servicer shall cause its books and accounts to be audited by an independent certified public accountant. Beginning with all audits of business conducted after December 31, 1995, the audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements prepared in accordance with generally accepted accounting principles and shall be performed in accordance with generally accepted auditing standards. The audit shall include a reconciliation of the licensee's trust accounts as of the audit date.

(b) "Expression of an opinion" includes (1) an unqualified opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4) an adverse opinion. If a financial statement, report, certificate, or opinion of the independent certified public accountant is in any way qualified, the commissioner may require the licensee to take any action that the commissioner deems appropriate to address the qualification. The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of the rejection and the reason therefor. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiencies. Failure to correct the deficiencies is a violation of this division. The commissioner shall retain a copy of all financial statements, reports, certificates, or opinions so rejected.

(c) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor must be fully explained.

(d) The audit report shall be filed with the commissioner within 105 days of the end of the licensee's fiscal year. The report filed with the commissioner shall be certified by the certified public accountant conducting the audit. The commissioner may promulgate rules regarding late audit reports.

(e) If a licensee required to make an audit fails to cause an audit to be made, the commissioner may cause the audit to be made by an independent certified public accountant at the licensee's expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means that the commissioner establishes by rule. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of the commissioner.

(f) Audits conducted in accordance with the uniform single audit procedures of the United States Department of Housing and Urban Development may be submitted in fulfillment of the requirements of this section.

(Amended by Stats. 2009, Ch. 160, Sec. 62. Effective October 11, 2009.)

50201.

(a) A licensee issued a license for purposes of making or servicing residential mortgage loans, including a licensee employing one or more mortgage loan originators, shall continuously maintain a minimum tangible net worth at all times of two hundred fifty thousand dollars (\$250,000).

(b) Tangible net worth shall be computed in accordance with generally accepted accounting principles.

(c) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

(Amended by Stats. 2009, Ch. 160, Sec. 63. Effective October 11, 2009.)

50202.

(a) Escrow funds for a purpose authorized by the residential mortgage loan contract (1) shall be subject to and satisfy all applicable state and federal requirements, including Section 2609 of the federal Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et seq.) and all applicable provisions of the Civil Code, (2) shall be maintained in a depository institution as described in subdivision (b), and (3) may not be commingled with a licensee's funds.

(b) Except as provided in subdivision (f), a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve bank, or other similar government-sponsored enterprise, to be removed and used only for the following:

(1) Payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law.

(2) Refunds to the borrower.

(3) Transfer to another institution that is described in this subdivision.

(4) Forwarding to the appropriate servicer in case of a transfer of servicing.

(5) Any other purpose authorized by the residential mortgage loan contract.

(6) Compliance with a regulatory or court order.

(c) As used in this section, "trust funds" means funds collected by a licensee in connection with the making or servicing of a residential mortgage loan that the licensee holds on behalf of another.

(d) Notwithstanding any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a non-interest-bearing account of a commercial bank (including a national banking association) of funds received by a licensee who services mortgage loans under this law, shall inure to the licensee, unless otherwise agreed in writing by the licensee and the investor on whose behalf the licensee services the loan. A borrower shall receive at least 2 percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code.

(e) Trust funds are not subject to the enforcement of a money judgment arising out of a claim against the licensee or person acting as the servicing agent, and in no instance shall the trust funds be considered or treated as an asset of the licensee or person performing the functions of a residential mortgage lender or loan servicer.

(f) A licensee may, at the request of the owner of the trust funds, transfer the funds initially deposited in a non-interest-bearing trust account into an interest-bearing account in a federally insured depository institution if all of the following requirements are met:

(1) The account is in the name of the residential mortgage lender licensee in trust for the specified beneficiary.

(2) All of the funds in the account are federally insured.

(3) The funds in the account are kept separate and distinct from the funds of the licensee or funds of any other person for whom the licensee holds funds in trust.

(4) The licensee discloses to the person from whom the funds are received and the beneficiary of the account how interest will be calculated and paid, whether service

charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) All interest earned on the account will be paid to the owner of the trust funds or the beneficiary.

(Amended by Stats. 2009, Ch. 160, Sec. 64. Effective October 11, 2009.)

50203.

(a) A licensee may not require a borrower to pay fees or charges prior to the residential mortgage loan closing, except for:

(1) Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as credit reports, appraisals, flood certification, and tax service, and in transactions where these services are provided by the licensee, a charge not to exceed the prevailing market rate for the service.

(2) An application fee.

(3) A rate-lock fee, provided:

(A) There is a written agreement signed by the borrower and licensee.

(B) The terms of the agreement include, but are not limited to:

(i) The expiration date of the rate-lock fee agreement.

(ii) The principal amount of the mortgage loan, the term of the mortgage loan, and identification of the property.

(iii) The initial interest rate and the discount (points) to be paid.

(iv) The amount and payment term of the rate-lock fee along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.

(C) The licensee demonstrates to the commissioner that it is able to perform under the terms of the agreement.

(4) A commitment fee, upon approval of the residential mortgage loan application, provided:

(A) The commitment is in writing and signed by the licensee and the borrower.

(B) The commitment contains all of the following information:

(i) The terms and conditions of the residential mortgage loan.

(ii) The terms and conditions of the commitment, including, but not limited to, all of the following:

(I) The time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than three calendar days from the date of commitment or the date of mailing, whichever is later.

(II) The amount and payment terms of the commitment fee, along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.

(III) The expiration date of the commitment.

(IV) Conditions precedent to closing.

(b) If the licensee has performed its obligations under the law related to the transaction, fees or charges collected pursuant to this section, other than those collected pursuant to paragraphs (1) and (2) of subdivision (a), shall be refunded if a valid commitment or closing, respectively, does not occur, except that the licensee may retain appropriate fees upon the licensee's demonstration to the commissioner that any of the following occurred:

(1) The borrower withdrew the loan application.

(2) The borrower made a material misrepresentation or omission on the loan application.

(3) The borrower failed, after written request, to provide documentation necessary to the processing or closing of the loan application.

(4) The closing failed to occur due solely to the fault of the borrower.
(Amended by Stats. 1995, Ch. 564, Sec. 14. Effective January 1, 1996.)

50204.

A licensee may not do any of the following:

- (a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.
- (b) Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.
- (c) Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.
- (d) Commit an act in violation of Section 2941 of the Civil Code.
- (e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.
- (f) Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.
- (g) Engage in fraudulent home mortgage underwriting practices.
- (h) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.
- (i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.
- (j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.
- (k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.
- (l) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.
- (m) Commit an act in violation of Section 1695.13 of the Civil Code.
- (n) Make or service a loan that is not a residential mortgage loan under the authority of the license.
- (o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.
- (p) Make or broker a loan that is offered by, negotiated by, or applied for through a mortgage loan originator who is not licensed in this state through the Nationwide Mortgage Licensing System and Registry, unless the mortgage loan originator is exempt from licensure.

(Amended by Stats. 2009, Ch. 160, Sec. 65. Effective October 11, 2009.)

50205.

(a) A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon the recovery of an action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may by rule require a higher bond amount for a licensee employing one or more mortgage loan originators, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

(Amended by Stats. 2009, Ch. 160, Sec. 66. Effective October 11, 2009.)

50206.

(a) Prior to a change of control of the business of a licensee, the person wishing to acquire control shall submit an application to the commissioner and pay an investigation fee of one hundred dollars (\$100). The application shall contain the information that the commissioner, by rule, may prescribe as necessary to determine that the person meets the requirements of Section 50121.

(b) The commissioner shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of Section 50126.

(c) Upon notification by the commissioner that the change of control has been disapproved, the acquiring party shall immediately cease any activity subject to regulation under this division.

(Amended by Stats. 2009, Ch. 160, Sec. 67. Effective October 11, 2009.)

50207.

(a) A license, along with any currently effective order of the commissioner approving use of a different name pursuant to Sections 50120 and 50130, shall be conspicuously posted in the place of business authorized by the license.

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the

death, withdrawal, or admission of a partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Operative January 1, 1996.)

50208.

The license shall state the name of the licensee. If the licensee is a partnership, the license shall state the names of its general partners. If the licensee is a corporation or an association, the license shall state the date and place of the corporation's incorporation or organization. If the licensee is a residential mortgage lender or servicer, the license shall state the address of the licensee's principal business location. The license shall state whether the licensee is licensed as a residential mortgage loan lender or servicer or as a mortgage loan originator.

(Amended by Stats. 2009, Ch. 160, Sec. 68. Effective October 11, 2009.)

50209.

The unique identifier of any licensed mortgage loan originator shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Internet Web sites, and any other documents as established by rule, regulation, or order of the commissioner.

(Added by Stats. 2009, Ch. 160, Sec. 69. Effective October 11, 2009.)

CHAPTER 5. Administration and Powers of the Commissioner [50301 - 50333]

(Chapter 5 added by Stats. 1994, Ch. 994, Sec. 7.)

50301.

Without limitation, the functions, powers, and duties of the commissioner include the following:

- (a) To issue or refuse to issue a license as provided by this division.
- (b) To revoke or suspend for cause any license as provided by this division.
- (c) To keep records of licenses issued under this division.
- (d) To receive, consider, investigate, and act upon complaints made in connection with a licensee.
- (e) To prescribe the forms of and receive (1) applications for licenses and (2) reports and books and records required to be made by a licensee under this division, including annual audited financial statements.
- (f) To subpoena documents and witnesses and compel their attendance and production, to administer oaths, and to require the production of books, papers, or other materials relevant to any inquiry authorized by this division.
- (g) To require information with regard to a license applicant that the commissioner may deem necessary, with regard for the paramount public interest in ascertaining the experience, background, honesty, truthfulness, integrity, and competency of the license applicant for financial transactions involving primary or subordinate mortgage financing, and if the license applicant is an entity other than an individual, in ascertaining the honesty, truthfulness, integrity, and competency of an officer or director of the corporation, association, or other entity, or the members of a partnership.
- (h) To enforce by order any provision of this division.
- (i) To levy fees, fines, and charges in an amount sufficient to cover the cost of the services performed in administering this division, as set forth by rule.
- (j) To appoint examiners, supervisors, experts, and special assistants as needed to effectively and efficiently administer this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50302.

(a) As often as the commissioner deems necessary and appropriate, but at least once every 48 months, the commissioner shall examine the affairs of each residential mortgage lender and servicer licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state or federal government, other states, agencies, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this law, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.

(b) The commissioner shall provide a written statement of the findings of the examination, issue a copy of that statement to each licensee's principals, officers, or directors, and take appropriate steps to ensure correction of any violations of this division.

(c) Affiliates of a licensee are subject to examination by the commissioner on the same terms as the licensee, but only when reports from, or examination of, a licensee provides documented evidence of unlawful activity between a licensee and affiliate benefiting, affecting, or arising from the activities regulated by this division.

(d) The residential mortgage lender or servicer licensee shall pay, and the commissioner shall assess, the reasonable expenses of any examination of the licensee and affiliates, consistent with the requirements of subdivision (c) of Section 50314.

(e) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

(Amended by Stats. 2009, Ch. 160, Sec. 70. Effective October 11, 2009.)

50303.

Neither the commissioner nor any employee of the Department of Corporations shall be precluded from obtaining a residential mortgage loan from a lender licensed under this division, subject to the rules that may be adopted hereunder or pursuant to other proper authority.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50304.

The commissioner may, from time to time, make, amend, and rescind the rules, forms, and orders that are necessary to carry out the provisions of this law, including rules and forms governing applications and reports, and defining any terms, whether or not used in this law, provided that the definitions are consistent with the provisions of this law. For the purposes of rules and forms, the commissioner may classify loans, persons, and matters within the jurisdiction of the commissioner, and may prescribe different requirements for different classes. The commissioner may, in his or her discretion, waive a requirement of a rule or form if, in the opinion of the commissioner, the requirement is not in the public interest or necessary for the protection of borrowers or investors.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50305.

Upon written request from the commissioner, a licensee shall forward authorization to release workpapers of the licensee's independent auditor to the commissioner within two business days of receiving the request.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50306.

The commissioner may order a licensee that opens a branch office in this state or changes its business location or its locations from which activities subject to this law are conducted, without first notifying the commissioner in writing, as required by Section 50124, to forfeit to the people of the state up to one hundred dollars (\$100) each day for the first 10 days and ten dollars (\$10) for each day thereafter during which the branch office or changed location is maintained without notifying the commissioner.

(Amended by Stats. 1998, Ch. 178, Sec. 3. Effective January 1, 1999.)

50307.

(a) Each residential mortgage lender or servicer licensee shall file a report with the commissioner annually, on or before the first day of March, giving the relevant information that the commissioner reasonably requires to make the calculation required by subdivision (a) of Section 50401. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make any other special reports to the commissioner that the commissioner may, from time to time, require.

(c) If any licensed residential mortgage lender or servicer subject to this division fails to make a report required by law or by the commissioner, the commissioner may immediately cause the books, records, papers, and affairs of that licensee to be thoroughly examined.

(Amended by Stats. 2009, Ch. 160, Sec. 71. Effective October 11, 2009.)

50307.1.

The commissioner may, as he or she deems necessary, require licensees to provide reports concerning their residential mortgage loan servicing activities, including, but not limited to, information similar to that collected in connection with the Mortgage Servicers Survey, first published by the Department of Corporations in December 2007. The commissioner is additionally authorized to seek and accept information provided on a voluntary basis by residential mortgage loan servicers not subject to the commissioner's jurisdiction. The commissioner shall post only aggregated survey results on the department's Internet Web site, and shall note the number of loan servicers submitting data included in the aggregated totals and the estimated percentage of outstanding mortgage loans to Californians that are serviced by these loan servicers, to the extent information on the number of outstanding loans is available from a reliable source. Nothing in this section is intended to reduce or change the commissioner's authority to request and demand reports under Section 50307.

(Added by Stats. 2008, Ch. 277, Sec. 2. Effective January 1, 2009.)

50307.2.

The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(Added by Stats. 2009, Ch. 160, Sec. 72. Effective October 11, 2009.)

50308.

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or costs of loans, the commissioner shall require that they are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by that person, this fact shall be clearly indicated in the advertisement. Compliance with the requirements of the federal Truth in Lending Act and Regulation Z promulgated thereunder is presumed to satisfy the requirements of this section.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50309.

The commissioner may require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use. The file shall be available to the commissioner upon request.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50310.

Nothing in this law shall preclude a person, other than a mortgage loan originator, whose license has been suspended or revoked, summarily or otherwise, from continuing to service residential mortgage loans pursuant to servicing contracts in existence at the time of the suspension for a reasonable transition period, as determined by the commissioner, after the date of the entry of the final decision in the case suspending or revoking the license.

(Amended by Stats. 2009, Ch. 160, Sec. 72.5. Effective October 11, 2009.)

50311.

Nothing in this law shall preclude a person whose license has been suspended or revoked, summarily or otherwise, from making a residential mortgage loan pursuant to a commitment issued by that person prior to the suspension or revocation. A prospective borrower who received a commitment issued by a person whose license has been suspended or revoked may, prior to the closing of the loan, terminate the commitment and receive a refund of all money paid to that person.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50312.

The commissioner, in his or her discretion, may honor requests from interested persons for interpretive opinions.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50313.

In any proceeding under this law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50314.

(a) Every person subject to this division shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage lending or residential mortgage loan servicing functions performed by that person comply with the provisions of this division and with all rules and orders made by the commissioner under this division. Upon request of the commissioner, residential mortgage lenders and residential mortgage loan servicers shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

(b) The business documents and records of every residential mortgage lender or residential mortgage loan servicer, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this subdivision shall not apply to persons specified in subdivision (g) of Section 50003.

Any person subject to this division shall, upon request and within the time specified in the request, allow inspection and copying of any documents and records by the commissioner or his or her authorized representative.

(c) The cost of every inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost of any inspection or examination, the commissioner may use the estimated average hourly cost, including overhead, for all persons performing inspections or examinations of licensees or other persons subject to this division for the fiscal year.

For the purpose of this subdivision only, no person other than a licensee shall be deemed to be a person subject to this division unless and until the person is determined to be a person subject to this division by an administrative hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or by a judicial hearing in any court of competent jurisdiction.

(d) Investigation and examination reports prepared by the commissioner's duly designated representatives are not public reports. Those reports may be disclosed to the officers or directors of a licensee that is the subject of the report for the purpose of corrective action by the officers or directors. Such a disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

(Amended by Stats. 2000, Ch. 968, Sec. 4. Effective January 1, 2001.)

50315.

(a) The commissioner may refer the evidence that is available concerning any violation of this law or of any rule or order adopted under this division to the district attorney of the

county in which the violation occurred. The district attorney may, with or without the commissioner's referral, institute criminal proceedings under this law. The commissioner and his or her counsel, deputies, or assistants may, upon request of the district attorney, assist the district attorney in presenting the law or facts at the trial.

(b) After an examination, investigation, or hearing under this division, if the commissioner deems it of public interest or advantage, he or she may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50316.

(a) For any licensee, a disciplinary action taken by the State of California, another state, any agency of the federal government, or another country for any action substantially related to the activity regulated under this law may be a ground for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against a licensee by the State of California, another state, any agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

(Amended by Stats. 1998, Ch. 178, Sec. 4. Effective January 1, 1999.)

50316.5.

Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Corporations, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(Added by Stats. 2012, Ch. 264, Sec. 11. Effective January 1, 2013.)

50317.

(a) Any person who has been convicted of, or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve as an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests, trustee, or employee of a residential mortgage lender or residential mortgage loan servicer. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed residential mortgage lender or residential mortgage loan servicer commenced prior to January 1, 1995, or whose criminal conviction, plea, or judgment occurred prior to January 1, 1995.

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following:

(1) Offenses specified in Chapter 18 (commencing with Section 3350) of Division 1.

(2) Offenses specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2.

(3) Offenses specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5.

(4) Offenses specified in Chapter 7 (commencing with Section 17700) of Division 6.

(5) Offenses specified in Chapter 6 (commencing with Section 18435) of Division 7.

(6) Offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).

(7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code. For the purpose of this section, but not Section 50318, an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction under Section 1203.4 or 4852.13 of the Penal Code or a similar certificate of rehabilitation obtained in a foreign jurisdiction.

(c) On and after January 1, 1995, any officer, director, or other person who seeks a controlling ownership interest of 10 percent or more in the business of a licensed residential mortgage lender or residential mortgage loan servicer shall, as a condition to obtaining that interest or participation, authorize the commissioner to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of, or pleaded nolo contendere to, a criminal offense specified in subdivision (b).

(d) Any state summary criminal history information obtained pursuant to this section shall be kept confidential and no recipient shall disclose the contents other than for the purpose of acquisition of an ownership interest in or other participation in the business of a licensed residential mortgage lender or residential mortgage loan servicer.

(e) Any person who knowingly violates subdivision (a), including, but not limited to, any residential mortgage lender or residential mortgage loan servicer who permits an ownership interest in or other participation in the business of a residential mortgage lender or residential mortgage loan servicer in violation of subdivision (a) shall, upon conviction, be subject to punishment as set forth in Section 50500.

(f) Nothing in this section shall be construed to permit the reinstatement of any person barred by the commissioner pursuant to Section 50320 nor to prohibit the commissioner from bringing any action pursuant to Section 50320.

(g) If any provision of this section or the application of this section to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) For purposes of this section, the term "employee" means (1) a mortgage loan originator, including a loan officer or other individual who negotiates agreements with the public, or (2) an individual with access to or responsibility for trust funds held by the licensee.

(Amended by Stats. 2009, Ch. 160, Sec. 73. Effective October 11, 2009.)

50318.

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, and (A) the violation was either known or should have been known by the person committing or causing it, or (B) the violation has caused material damage to the residential mortgage lender, residential mortgage loan servicer, mortgage loan originator, or to the public.

(2) That the person (A) has been convicted of or pleaded nolo contendere to any crime, or (B) has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 50317, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under the law.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator and from engaging in any business activity on the premises where a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator is conducting its business. This subdivision shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensed residential mortgage lender, residential mortgage loan servicer, or mortgage loan originator.

(e) This section shall apply to any violation, conviction, plea, or judgment after the enactment of this section.

(f) If any provision of this section or the application of this section to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(g) For purposes of this section, the term "employee" means (1) a mortgage loan originator, including a loan officer or other individual who negotiates agreements with the public, or (2) an individual with access to or responsibility for trust funds held by the licensee.

(Amended by Stats. 2009, Ch. 160, Sec. 74. Effective October 11, 2009.)

50319.

(a) If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division is in an insolvent condition, is conducting business in an unsafe or injurious manner that renders further operations hazardous to the public or to customers, has failed to comply with the provision of Section 50317, has permitted its tangible net worth to be lower than the minimum required by law, or has failed to comply with the bonding requirements of Section 50205, the commissioner may, by an order addressed to and served by registered or certified mail, or by personal service on that person, and on any other person having in his or her possession or control any trust funds or other property deposited in escrow with that person, direct discontinuance of the disbursement, in whole or in part, of trust funds held by the licensee and order the establishment of a separate trust account for all subsequent trust funds received by the licensee. No person having in his or her possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner, or the person is the subject of an order for relief in bankruptcy.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 2 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after the receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

(Amended by Stats. 2009, Ch. 500, Sec. 44. Effective January 1, 2010.)

50320.

Whenever, in the opinion of the commissioner, a person is engaged, either actually or through subterfuge, in the business of making residential mortgage loans, servicing residential mortgage loans, or engaging in business as a mortgage loan originator, without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (b) of Section 50002.

(Amended by Stats. 2009, Ch. 160, Sec. 75. Effective October 11, 2009.)

50321.

If, after investigation, the commissioner has reasonable grounds to believe that any licensee has violated its articles of incorporation or any law or rule binding upon it, the commissioner shall, by written order addressed to the licensee, direct the discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 50323.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50322.

If, after investigation, the commissioner has reasonable grounds to believe that any licensee is conducting business in an unsafe or injurious manner, the commissioner shall, by written order addressed to the licensee, direct the discontinuance of the unsafe or injurious practices. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 50323.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50323.

(a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50324.

(a) If, after investigation, the commissioner has reasonable grounds to believe that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may, bring an action to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. The action shall be brought in the name of the people of the State of California in the superior court. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted. A receiver, monitor, conservator, or other designated fiduciary or officer of the court, which may include the commissioner, may be appointed for the defendant or the defendant's assets. Any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners,

trustees, or persons who exercise similar powers and perform similar duties. The powers include the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief. The ancillary relief may include, but not be limited to, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50325.

The commissioner may immediately revoke the residential mortgage lender's, residential mortgage loan servicer's, or mortgage loan originator's license if the licensee fails to comply with any order issued under Section 50318, 50319, 50321, 50322, or 50503. The commissioner shall not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.

(Amended by Stats. 2009, Ch. 160, Sec. 76. Effective October 11, 2009.)

50326.

If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (b) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender or residential mortgage loan servicer.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50327.

(a) The commissioner may, after notice and a reasonable opportunity to be heard, deny, decline to renew, suspend, or revoke any license if the commissioner finds that:

(1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

(2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

(Amended by Stats. 2012, Ch. 264, Sec. 12. Effective January 1, 2013.)

50328.

Except in the case of an exempt person, whenever the commissioner deems it to be necessary for the public interest, the commissioner has continuous authority to exercise the powers set forth in this division. These powers may be exercised whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50329.

(a) In making an investigation or examination authorized by this division, the commissioner may, for a reasonable time not exceeding 30 days, control access to any documents and records of the licensee pertaining to the business of any residential mortgage lender or residential mortgage loan servicer. The commissioner may place a keeper in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no director, officer, partner, or employee shall remove or attempt to remove any of the documents except pursuant to a court order or with the consent of the commissioner. However, the directors, officers, partners, and employees of the residential mortgage lender or residential mortgage loan servicer may examine the documents or records. The licensee's employees shall be permitted to make entries in the documents or records to reflect current transactions. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this division, the licensee shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(b) For the purpose of any investigation, examination, or proceeding under this division, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any documents or records that the commissioner deems relevant.

(c) In case of refusal to obey a subpoena issued to a director, officer, partner, or employee of a licensee, the superior court may issue an order requiring that person to appear before the commissioner. When before the commissioner, the director, officer, partner, or employee shall produce documentary evidence or give evidence on the matter under investigation. Failure to obey the order of the court may be punished by the court as contempt.

(d) No person is excused from testifying or from producing any document or record before the commissioner, on the ground that the testimony or evidence required by the commissioner may tend to incriminate the person or subject him or her to a penalty or forfeiture. However, no individual may be penalized for any matter concerning which he or she is compelled to testify or produce evidence, after validly claiming the privilege against self-incrimination. However, individual testimony is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50330.

The authority to make or conduct any examination or investigation may be delegated by the commissioner to any deputy, investigator, examiner, or auditor appointed for that purpose. An individual appointed by the commissioner for this purpose may administer oaths and subpoena witnesses, and take their testimony. The appointment shall be made by an instrument in writing signed by the commissioner. Upon any examination or investigation, the instrument shall be produced by the appointed individual at any time upon demand.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50331.

All hearings provided for in this division shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The commissioner has all the powers granted therein.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50332.

Every order, decision, license, or other official act of the commissioner is subject to review, in accordance with law.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50333.

(a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final rules to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a). A licensed mortgage loan originator shall adhere to policies and procedures developed by his or her employer in accordance with this division and applicable federal law and regulation.

(Amended by Stats. 2009, Ch. 160, Sec. 77. Effective October 11, 2009.)

CHAPTER 6. Assessments [50400 - 50402]

(Chapter 6 added by Stats. 1994, Ch. 994, Sec. 7.)

50400.

The commissioner has the authority to levy assessments for the support of this part as provided for in this chapter.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50401.

(a) In addition to other fees and reimbursements required to be paid under this division, each residential mortgage lender or servicer licensee shall pay to the commissioner an amount equal to the lesser of: (1) its pro rata share of all costs and expenses (including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars (\$5,000). The pro rata share shall be the greater of either one thousand dollars (\$1,000) or the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year. For the purposes of this section, the "principal amount" of a mortgage loan means the initial total amount a borrower is obligated to repay the lender and the "average value" of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

In order for the commissioner to calculate the assessment under this section, each licensee shall file an annual report for the calendar year just ended containing the information required by the commissioner on or before March 1 of the year in which the assessment is to be calculated.

In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of this division and all reimbursements provided for under this division.

(b) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this division, and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses.

(c) On or before the 30th day of September in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall

be paid within 20 days. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(d) If a licensee fails to pay the assessment on or before the 30th day following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. An order issued under this section is not stayed by the filing of a request for a hearing. If, after an order is made, the request for hearing is filed in writing within 15 days from the date of service of the order and a hearing is not held within 60 days of the filing, the order is deemed rescinded as of its effective date. During a period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by further order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

(Amended by Stats. 2009, Ch. 160, Sec. 78. Effective October 11, 2009.)

50402.

Notwithstanding subdivision (a) of Section 50401, if the commissioner determines that the charges and assessments set forth in this division for any year are in excess of the amount necessary, or are insufficient, to meet the expenses of administration of this division for that year, the assessments and charges for the following year shall be adjusted on a pro rata basis in accordance with the percentage of the excess or insufficiency as related to the actual charges and assessments for the year for which the excess or insufficiency occurred, in order to recover the actual costs of administration and provide a prudent reserve of 90 days' costs and expenses.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

CHAPTER 7. Prohibited Practices and Penalties [50500 - 50513]

(Chapter 7 added by Stats. 1994, Ch. 994, Sec. 7.)

50500.

Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

(Amended by Stats. 2011, Ch. 15, Sec. 115. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

50501.

(a) Any person who violates a provision of this division, or any rule or order under this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. This penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50501.5.

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or person is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designee may issue a citation to that licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation and fine payment thereof by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any

of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If, within 30 days from the receipt of the citation, the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(Added by Stats. 2013, Ch. 243, Sec. 5. Effective January 1, 2014.)

50502.

It is a violation of this division for any person to make any untrue statement of a material fact in any document filed with the commissioner under this division or rules adopted thereunder, or to omit any material fact which is required to be stated in any document.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50503.

(a) It is a violation for any person subject to this law or any director, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of trust funds, except as permitted by Section 50202, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity that constitutes theft or fraud in connection with any trust fund transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission of a material fact, pertaining to a loan or loan servicing.

(b) Any director, officer, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, or employee of a residential mortgage loan servicer who abstracts or misappropriates money, funds, trust obligations, or property deposited with a licensee, commits a violation of this section. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50504.

(a) If an amount other than or in excess of the charges permitted by this division is willfully charged, contracted for, or received, in addition to any other penalties or

remedies, the commissioner may order the licensee to refund to all borrowers charged the excess amount, the excess amount and the amount of the charge, both with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

(b) If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

(Repealed and added by Stats. 1995, Ch. 564, Sec. 20. Effective January 1, 1996.)

50505.

Any person who violates any provision of any of the following federal acts or regulations violates this division:

(a) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.).

(b) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(c) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).

(d) Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).

(Amended by Stats. 2009, Ch. 629, Sec. 7. Effective January 1, 2010.)

50506.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly receives or appropriates any of the licensee's property, other than in payment of a just demand or with intent to defraud, or who omits to make or causes an omission to be made in the full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof, violates this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50507.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books, willfully refuses or neglects to make any proper entry in the books as required by law or to allow the books to be inspected by the commissioner or his or her deputies or investigators, violates this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50508.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who makes a false entry in any book or record of the business, or in connection with any transaction of the business, with intent to deceive any officer, director, or employee thereof, or any agent or examiner, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, omits to make a new entry of any matter particularly pertaining to the business property condition, or transactions of the entity in any document of the licensee, or who, with like intent, makes unavailable any document of the licensee made, written, or kept, or required to be made, written, or kept by him or her under his or her direction, violates this division.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50509.

Any officer, director, partner, trustee, or employee of any entity who abstracts or misapplies any of the money, funds, or property of a licensee, or misapplies its credit, or abstracts or misapplies money, funds, trust obligations, or property deposited with a licensee, violates this division. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the licensee. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50510.

Nothing in this chapter shall be construed to authorize a criminal prosecution for a violation of a civil statute incorporated by reference into this division. Civil monetary penalties and fines shall not be imposed under this law for a violation of subdivision (e) or (j) of Section 50204 or Section 50505 if a licensee demonstrates that it has paid a civil monetary penalty or fine for the same act or transaction, as a violation of Section 17200 or 17500 of the Business and Professions Code, Section 2941 of the Civil Code, or provisions of the Real Estate Settlement Procedures Act (12 U.S.C.A. Sec. 2601 et seq.).

(Added by Stats. 1994, Ch. 994, Sec. 7. Effective January 1, 1995. Section operative January 1, 1996, pursuant to Section 50601 (later repealed).)

50511.

The commissioner may, subject to the requirements of subdivisions (b), (c), and (d) of Section 50318, suspend for a period not to exceed 12 months or bar a person from any position of employment with a licensee if the commissioner finds that the person has willfully used or claimed without authority a designation or certification of special education, practice, or skill that the person has not attained, or willfully held out to the

public a confusingly similar designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.

(Added by Stats. 2006, Ch. 201, Sec. 2. Effective January 1, 2007.)

50512.

(a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(Added by Stats. 2007, Ch. 101, Sec. 30. Effective January 1, 2008.)

50513.

(a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any

requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

(Added by Stats. 2009, Ch. 160, Sec. 79. Effective October 11, 2009.)

CHAPTER 8. Operation of Division [-]

(Chapter 8 added by Stats. 1994, Ch. 994, Sec. 7.)

Note: This section is unused.

CHAPTER 9. Brokerage Services for Borrowers [50700 - 50706]

(Chapter 9 added by Stats. 1996, Ch. 19, Sec. 1.)

50700.

(a) A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, shall not provide brokerage services to a borrower, except as provided in subdivision (c).

(b) "Brokerage services" means either of the following:

(1) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (v) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, and closed in the name of that lender, for a fee paid by the borrower or the institutional lender.

(2) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (p) of Section 50003, secured by residential real estate, as defined in subdivision (v) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (k) of Section 50003, but closed in the name of the licensee, for a fee paid by the borrower or the institutional lender.

(c) A residential mortgage lender or a mortgage loan originator employed by a residential mortgage lender may provide brokerage services under the authority of the lender's license, if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of Section 50701.

(d) This chapter does not authorize a residential mortgage lender licensee to do any of the following:

(1) Provide brokerage services through independent contractors.

(2) Provide brokerage services through an employee not licensed as a mortgage loan originator.

(3) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a "high cost mortgage," referred to in Section 152(aa)(1) of the federal Home Ownership and Equity Protection Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).

(4) Hold itself out to borrowers, through advertising, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.

(5) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.

(e) A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.

(Amended by Stats. 2010, Ch. 287, Sec. 14. Effective January 1, 2011.)

50701.

- (a) As soon as practical after a borrower requests that the residential mortgage lender licensee arrange a loan to be made by another institutional lender, and before the licensee performs brokerage services for the borrower, the licensee and borrower shall enter into a written loan brokerage agreement that satisfies the requirements of this section.
- (b) Both the licensee's authorized representative, who shall be a licensed mortgage loan originator, and the borrower shall sign and date the loan brokerage agreement, and the licensee shall deliver a copy of the fully executed loan brokerage agreement to the borrower either upon execution, if the documents are signed in the licensee's office, or within three business days after execution.
- (c) The loan brokerage agreement shall include the mortgage loan originator's unique identifier.
- (d) The loan brokerage agreement shall contain an explicit statement that (1) the licensee is acting as the agent of the borrower in providing brokerage services to the borrower, and (2) when acting as agent for the borrower, it owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the licensee is authorized to act as an agent for any other person, the brokerage agreement shall contain a statement of that fact and identification of that person.
- (e) The loan brokerage agreement shall contain a detailed description of the services the licensee agrees to perform for the borrower, and a good faith estimate of any fees the licensee will receive for those services, whether paid by the borrower, the institutional lender, or both.
- (f) The loan brokerage agreement shall carry a clear and conspicuous statement of the conditions under which the borrower is obligated to pay the licensee for brokerage services rendered under the agreement.
- (g) The loan brokerage agreement shall provide that, if the licensee makes a materially false or misleading statement or omission in the inducement or implementation of the agreement, the borrower may, in addition to any other legal rights or remedies, upon written notice, do any of the following:
- (1) Rescind the brokerage agreement.
 - (2) Recover fees paid by the borrower to the licensee for brokerage services rendered by the licensee pursuant to the agreement.
 - (3) Recover actual costs, including attorney's fees, for enforcing the borrower's rights under the loan brokerage agreement.
- (h) If the loan brokerage agreement fails to set forth the rights in subdivision (g), these rights shall be implied by operation of law.
- (i) The loan brokerage agreement shall be the only agreement between the borrower and the licensee with respect to a single loan.
- (j) A licensee whose services to a borrower are limited to providing brokerage services may not require a borrower to pay fees or charges before the residential mortgage loan closing, other than either of the following:
- (1) Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as credit reports, appraisals, inspections, flood certification, and tax service, and, in transactions where those services are provided by the licensee, a charge not to exceed the fee customarily charged for the same or comparable service in the community in which the service was rendered.

(2) An application fee.

A licensee may not accept a fee under Section 50203(a)(1) or (2) and subsequently require a borrower to pay additional fees or charges under this paragraph for the borrower's loan transaction.

(k) Any loan brokerage agreement that provides for the collection of an application fee shall be approved as to form by the commissioner before its use by a licensee, if the agreement meets the following requirements:

(1) The agreement specifies the services to be rendered for the application fee.

(2) The agreement sets forth the amount of the application fee and the date the fee becomes due and payable.

(3) The agreement does not contain a provision that purports to except or relieve the licensee from the responsibility to fulfill verbal commitments and representations made by employees or agents of the licensee when contracting for the application fee, or guarantee that a loan will be obtained.

(4) The agreement sets forth a definite date for full performance of the services promised in exchange for the application fee.

(Amended by Stats. 2009, Ch. 160, Sec. 83. Effective October 11, 2009.)

50702.

(a) The annual report required by Section 50401(a) shall include both of the following:

(1) The number and the aggregate principal amount of closed residential mortgage loans secured by residential real estate in which the licensee provides brokerage services, as defined in this chapter.

(2) The number and aggregate principal amount of residential mortgage loans made by the licensee under this division.

(b) The sum total of the aggregate principal loan amounts reported in paragraphs (1) and (2) of subdivision (a) shall be deemed the aggregate principal amount of mortgage loans secured by residential real property originated by the licensee, for purposes of determining a licensee's annual assessment under subdivision (a) of Section 50401.

(c) The commissioner shall provide copies of the annual reports required by subdivision (a) of Section 50401 to the Bureau of Real Estate upon request of the Real Estate Commissioner.

(Amended by Stats. 2013, Ch. 352, Sec. 93. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

50703.

Notwithstanding Section 10248.3 of the Business and Professions Code, the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code shall apply to a residential mortgage loan arranged by a licensee pursuant to this chapter, unless that loan exceeds the principal loan amount specified for a bona fide loan secured directly or collaterally by a first trust deed or a bona fide loan secured directly or collaterally by a lien junior thereto, specified in Section 10245 of the Business and Professions Code.

(Added by Stats. 1996, Ch. 19, Sec. 1. Effective March 20, 1996.)

50706.

(a) Except as provided in subdivision (b), the commissioner has primary regulatory jurisdiction over all transactions in which a licensed residential mortgage lender provides brokerage services, whether the brokerage services are provided under the authority of this chapter or under the Real Estate Law.

(b) If the commissioner has reason to believe that a residential mortgage lender or one of its employees has violated the Real Estate Law while providing brokerage services under a real estate broker's license, the commissioner shall refer the matter to the Real Estate Commissioner, who may conduct an investigation to determine if a violation of the Real Estate Law has occurred. If the Real Estate Commissioner believes a violation has occurred, the Real Estate Commissioner may commence an enforcement action under the Real Estate Law.

(Added by Stats. 1996, Ch. 19, Sec. 1. Effective March 20, 1996.)